absence of an express provision making the contract void. In support of this view, see *Bloxsome* v. *Williams,* 3 B. & C. 232; *Gibbs & Sterrett Mfg. Co.* v. *Brucker, supra;* McCardie, J., in *Brightman & Co.* v. *Tate,* [1919], 1 K. B. 463, 472.

CONTRACTS—THIRD PARTY BENEFICIARY IN MICHIGAN.—Plaintiff's mother was dead. After considerable talk between plaintiff's father and Miss Carpenter, testatrix herein, it was agreed, in 1868, by the father that she should take plaintiff to live with her. It was agreed by Miss Carpenter that she would board, clothe and educate plaintiff until he was of age, and would give him everything she owned when she was through with it. Plaintiff was consulted, and consented. He was then seven years of age. He lived with Miss Carpenter until his marriage, and for the many years thereafter until her death gave her the care and attention of a son. She died in 1919, testate, having given all her property to others than the plaintiff, the bulk of it to the American Baptist Publication Society. Plaintiff brought this bill, asking specific performance of the above contract, and that he be decreed owner of all the realty and personalty of which Miss Carpenter died seized and possessed. *Held,* plaintiff was a party to the contract and to the consideration, and since the contract had been fully performed on his part is entitled to specific performance. *Bassett* v. *American Baptist Publication Society,* (Mich., 1921), 183 N. W. 747.

The court specifically denies that it is giving relief to a third party beneficiary, but states that there was such privity of contract between Miss Carpenter, plaintiff's father and plaintiff as to entitle plaintiff to maintain this suit, citing *Preston* v. *Preston,* 207 Mich. 681. See 18 MICH. L. REV. 58. *Preston* v. *Preston, supra,* and the Michigan decisions on third party beneficiary cases in general are very fully reviewed in 18 MICH. L. REV. 318.

CRIMES—SUFFICIENCY OF INDICTMENT.—Defendant was indicted under a statute prohibiting the placing of anything "on any railroad in this state calculated to obstruct, overthrow or direct from the track of such railroad any car," etc. The indictment alleged the placing upon the "tract" of the railroad of an obstruction calculated "to overthrow and direct from the track" the cars, etc. The lower court entered a judgment on a demurrer to the indictment. *Held,* the use of "tract" instead of "track" did not render the indictment bad, and the judgment should be reversed. *State* v. *Warfield,* (Md., 1921), 114 Atl. 835.

The court put its opinion on two grounds; first, that the statute prohibited placing obstructions on the "railroad," not specifically on the track thereof, and that "on the tract" was a proper allegation; second, that if "tract" were really intended to be "track," and was a mere mistake in spelling, such mistake could mislead no one. It is regrettable that such obviously harmless error can still be even thought of as a defense; but the decision is a relief from those such as *Evans* v. *State,* 34 Tex. Cr. 110, to the effect that the use of "possion" instead of "possession" rendered the indictment bad, despite its obvious contextual meaning; or *Commonwealth*

v. *McLoon,* 5 Gray (Mass.) 91, quashing an indictment because "A. D." was omitted from the date; or *Harwell* v. *State,* 22 Tex. App. 251, to the effect that a written verdict of "guity" is not equivalent to one of "guilty." There seems to be developing a much fairer interpretation of what the court in *Westbrook* v. *State,* — Tex. Cr. App. —, 227 S. W. 1104, calls "the sensible proposition that incorrect grammar, bad spelling, bad handwriting, the use of words not technically in their correct sense or places will none of them make an indictment bad unless same causes the thing intended to be charged to lack of sense or certainty."

CRIMINAL LAW—EVIDENCE—ILLEGAL SEARCH AND SEIZURE.—Defendant was convicted of violation of the state liquor law upon evidence obtained under a search warrant conforming to an unconstitutional search and seizure law. Before trial a demand was made for the return of the property seized and an application for an order directing its return was denied. *Held,* conviction should be set aside. *People* v. *Le Vasseur* (Mich., 1921), 182 N. W. 60.

The unconstitutionality of the statute in question (Act No. 53, Sec. 25, P. A. 1919) was decided in *People* v. *De La Mater,* (Mich., 1921), 182 N. W. 57. In the instant case the Michigan court shows no disposition to question the doctrine laid down in *People* v. *Marxhausen,* 204 Mich. 559, which followed the respectable, though often questioned, authority of *Boyd* v. *United States,* 116 U. S. 616, and *Weeks* v. *United States,* 232 U. S. 383, L. R. A., 1915 B, 834. See 19 MICH. L. REV. 355, and 9 ILL. L. REV. 43. When the objection is first made at the trial the cases are agreed that the evidence is admissible, no matter how obtained, partly, at least, on the theory that the court will not halt the trial to determine collateral matters. *Adams* v. *New York,* 192 U. S. 585; *People* v. *Aldorfer,* 164 Mich. 676. It may be suggested, however, that the court does exactly that whenever the admissibility of evidence depends upon a collateral question; *e. g.,* whether a confession offered in evidence is free and voluntary. It would seem, if the chief concern is to protect the defendant's constitutional rights rather than to determine his innocence or guilt, that the question might be raised at any time. As was well said by the Supreme Court of Kansas:

> "The federal Constitution was not framed for the special protection of those who violate statutes, but for the good of the entire citizenship." *State* v. *Missouri Pac. Ry.,* 96 Kan. 609.

It is submitted that the defendant's proper remedy is not immunity from punishment for crime, but a civil action against the trespassing officers. For a full discussion and large collection of cases, see WIGMORE ON EVIDENCE, §2264. See also *supra,* p. 93.

CRIMINAL LAW—MISTAKE OF FACT AS A DEFENSE—BIGAMY.—Defendant was indicted for bigamy under a statute providing that whoever, being married, shall marry another person during the life of the former husband or wife shall be guilty of a felony, unless at the time of the second marriage the defendant has obtained a divorce. The defendant, without having obtained a divorce, married again during the life of his former wife. As a